

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

D MCCALL,

Plaintiff,

vs.

Case No: 1:21-CV-715

**WAGNER EQUIPMENT CO., a Foreign
For-Profit Corporation,**

Defendant.

ANSWER

COMES NOW Defendant Wagner Equipment Company (“Wagner”), by its attorneys, and submits this Answer to the Complaint for Damages (Doc. No. 1-1) filed by Plaintiff D McCall (“McCall”).

FIRST DEFENSE

In response to the individually-numbered paragraphs of McCall’s Complaint, Wagner states:

1. Upon information and belief, Wagner admits the allegations in Paragraph 1.
2. Wagner admits the allegations in Paragraph 2.
3. Answering Paragraph 3, Wagner affirmatively states that McCall’s claims involve purported events which allegedly took place in Bernalillo County, New Mexico and that Wagner disputes many aspects of McCall’s version of events. Wagner denies the allegations in Paragraph 3 to the extent that they are inconsistent with this affirmative statement.
4. The allegations in Paragraph 4 contain legal conclusions regarding personal jurisdiction, to which no response is necessary. To the extent any response is considered

necessary, Wagner does not dispute that it is subject to personal jurisdiction in the State of New Mexico.

5. The allegations in Paragraph 5 contain legal conclusions regarding jurisdiction and venue, to which no response is necessary. To the extent any response is considered necessary, Wagner states that questions concerning jurisdiction and venue in the state court action have become moot, because Wagner has removed this matter to federal court. See Notice of Removal (Doc. No. 1).

6. Answering Paragraph 7, Wagner affirmatively states that the new facility it began developing in 2015 is located on property now known as 700 Wagner Ct. SE, Albuquerque, New Mexico 87105. Wagner denies the allegations in Paragraph 7 to the extent that they are inconsistent with this affirmative statement.

7. Wagner admits the allegations in Paragraph 8.

8. Wagner denies the allegations in Paragraphs 9, 10, 11, 12, and 13.

SECOND DEFENSE

McCall's Complaint fails to state a claim upon which relief may be granted.

THIRD DEFENSE

McCall's claim is barred by the statute of frauds, or other laws requiring that real estate commission agreements be in writing.

FOURTH DEFENSE

McCall's claim fails due to lack of mutual assent.

FIFTH DEFENSE

McCall's claim fails due to lack of consideration.

SIXTH DEFENSE

McCall's claim is barred by the doctrine of unclean hands.

SEVENTH DEFENSE

McCall's claim is barred by the doctrines of waiver and estoppel.

EIGHTH DEFENSE

McCall's claim is barred to the extent he has failed to mitigate his damages.

NINTH DEFENSE

McCall's claim is limited by offset.

TENTH DEFENSE

McCall's claim is barred to the extent it was not timely filed.

RESERVATION OF ADDITIONAL DEFENSES

Wagner reserves the right to assert additional affirmative defenses, or to amend the defenses set forth above, as additional information is learned through discovery.

Respectfully submitted,

RMH Lawyers, P.A.

By: /s/ Elizabeth A. Heaphy

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of July, 2021, I filed the foregoing *Answer* electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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